IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 240 of 2004

For Approval and Signature:

HON'BLE MR. JUSTICE M.D. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTILAL GHEVARCHAND SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 240 of 2004

MR DHAVAL M BAROT for Petitioner No. 1

Mr.K.P.Raval, A.P.P.for Respondent No. 1

RULE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR. JUSTICE M.D. SHAH

Date of decision: 08/04/2005

ORAL JUDGEMENT

1. In this Revision Application filed under Section

397 read with Section 401 of the Code of Criminal Procedure, 1973, the petitioner M/s. Jayantilal Ghevarchand Shah has challenged the order dated 17-11-2000 passed by the Collector, Banaskantha, in Case no.E.Purvatha.Parav.6A.58.2000.Vashi.3944/53 ordering confiscation of 100% amount of the seized goods valued at Rs.1,90,957/- as also 100% amount of the truck valued at Rs.1.49,557/-. The petitioner has also challenged the order dated 13-2-2004 passed by the Additional Sessions Judge, Banaskantha, Palanpur,in Criminal Appeal no.20 of 2000 preferred by the petitioner, whereby in partial modification of the order passed by the Collector an amount equivalent to 50% of the seized goods and 30% of the truck was ordered to be confiscated.

2. The petitioner was carrying on business as wholesale dealer and commission agent in the name and style of M/s.Jayantilal Ghevarchand Shah for which he was holding a wholesale license no.283/1995 and commission license no.227/1995 obtained by him under the provisions of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981. According to the petitioner, on 29-06-2000 he had sold 13005 Kgs. of mustered seeds to M/s. R.B.Traders, Mehsana, and a bill bearing no.26 was prepared for that transaction by the accountant. However, as the accountant was out of the town and the said bill was not traceable and since the truck was being delayed the petitioner himself prepared another bill and sent the goods. While these goods were being transported through the truck bearing no.GJ-8-T-4211 hired from M/s. Bharat Transport Company, Dhanera, the respondent no.3 had intercepted the said truck which was proceeding towards Mehsana and upon search found that the said goods were not having proper bill, and as such, the respondent no.3 passed a seizure order dated 29-6-2000 whereby the said goods as well as the truck came to be seized. Thereafter, the respondent no.3 carried out inspection of the shop and the stock register of the petitioner and since there was shortfall of muster seeds valued at Rs.41,400/- which amount also came to be seized. However, as a condition was imposed to furnish bank guarantee of an amount equivalent to the value of the goods and the truck for release of the truck and the goods, the petitioner had furnished a bank guarantee dated 4-7-2000 for Rs.3,00,000/-pursuant to which the truck and the goods were released. Thereafter, the respondent no.1 issued a show cause notice to the petitioner to show cause as to why the value of the seized goods and the truck should not be confiscated, a written reply dated 20-9-2000 whereof was given by the petitioner. Ultimately, the respondent no.2 -Collector

passed the order dated 17-11-2000 in Case no.E.Purvatha.Parav.6A.58.2000.Vashi.3994/53 ordering confiscation of 100% amount of the seized goods valued at Rs.1,90,557/- as also 100% amount of the truck valued at Rs.1,49,557/-whereupon the petitioner preferred Criminal Appeal no.20 of 2000 and the learned Additional Sessions Judge, Banaskantha, Palanpur, vide his order dated 13-2-2004 in partial modification of the said order of the Collector, ordered confiscation of an amount equivalent to 50% of the seized goods and 30% of the value of the truck. These two orders are the subject matter of challenge in the present Criminal Revision Application.

3. Learned Advocate Mr. D.M.Barot for the petitioner while placing reliance on the decision rendered by the learned Single Judge of this Court in M/s. Navjivan Roller Flour & Pulse Mills Ltd. v. State of Gujarat & Anr. reported in 2001 (2) G.L.R 1467 submitted that in a case like that of the present case, confiscation of a large amount should not take place, but should be nominal. He, accordingly, suggested that a reasonable order modifying the order passed by the learned Additional Sessions Judge reducing the percentage of confiscation be passed. For this purpose, Mr. Barot also drew my attention to paragraph 11 of the said judgment wherein the Supreme Court while reducing the amount towards confiscation has held as under:

"In any case, the petitioner's averment that the stock in question was reflected in the purchase register and considering the fact that there was no price control as far as wheat is concerned and considering the following dictum of Their Lordships of the Apex Court in N. Nagendra Rao & Co. v. State of A.P., AIR 1994 SC 2663 and that there is no allegation of adulteration or blackmarketing, the Court is of the view that the ends of justice would be served if the material to be confiscated is reduced from 50% to 25% of Rs.1,21,837-."

4. As against that learned A.P.P. Mr. K.P.Raval on the other hand submitted that the order passed by the learned Additional Sessions Judge is quite legal and proper which does not call for interference by this Court.

5. Having considered the case on hand in the light of the ratio of the decision in N. Nagendra Rao's case (Supra), I find that there is no allegation with regard to blackmarketing or adulteration and the violation of the Rules is merely technical in nature. I am therefore

of the opinion that interest of justice would be best served if, in place of an amount equivalent to 50% of the seized goods as already ordered by the learned Additional Sessions Judge, Banaskantha, Palanpur, in Criminal Appeal no.20/2000, an amount equivalent to 25% of the seized goods be confiscated i.e. 25% of Rs.1,90,557/-while the order regarding confiscation of 30% of the amount of the value of the truck shall hold good.

7. As a result of the foregoing discussion, the application is partly allowed. The order dated 17-2-2000 passed by the Collector, Banaskantha, in Case no.E.Purvatha.Parav.6A.58.2000.Vashi.3994/53 modified in appeal by order dated 13-2-2004 passed by the Additional Sessions Judge, Banaskantha, Palanpur, in Criminal Appeal no.20/2000 is further modified to the extent that in place of an amount equivalent to 50% of the seized goods as already ordered to be confiscated, an amount equivalent to 25% of the seized goods be confiscated i.e. 25% of Rs.1,90,557/-while the order regarding confiscation of 30% of the amount of the value of the truck shall remain intact.

Rule is made absolute to the aforesaid extent.

(M.D.Shah,J.)

stanley-mds.